UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,013	12/29/2000	Trevor Deosaran	1722.0010003	6364

26111	7590	11/09/2004

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EXAMINER
VU, KIEU D

ART UNIT	PAPER NUMBER
2173	

DATE MAILED: 11/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

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	Application No.	Applicant(s)
Office Action Summary	09/750,013	DEOSARAN ET AL.
	Examiner	Art Unit	
	Kieu D Vu	2173	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _31 August 2004_.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _17-33_ is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _17-33_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some *   c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)
2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5)☐ Notice of Informal Patent Application (PTO-152)
6)☐ Other: _____.

U.S. Patent and Trademark Office
PTOL-326 (Rev. 1-04)   Office Action Summary   Part of Paper No./Mail Date 103004

DETAILED ACTION

1.   This Office Action is in response to the Amendment filed 08/31/04.

2.   Claims 17-33 are pending.

Double Patenting

3.   The nonstatutory double patenting rejection is based on a judicially created
doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the
unjustified or improper timewise extension of the "right to exclude" granted by a patent
and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11
F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225
USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA
1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*,
418 F.2d 528, 163 USPQ 644 (CCPA 1969).

       A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be
used to overcome an actual or provisional rejection based on a nonstatutory double
patenting ground provided the conflicting application or patent is shown to be commonly
owned with this application. See 37 CFR 1.130(b).

       Effective January 1, 1994, a registered attorney or agent of record may sign a
terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with
37 CFR 3.73(b).

4.   Claims 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 are

rejected under the judicially created doctrine of obviousness-type double patenting as

being unpatentable over claims 1, 2, 3, 4, 5, 6, 7, 9, 10, 11, 12, 15, 13, 16, 14, 17, 18,

respectively, of U.S. Patent No. 6580431 in view of Slavenburg et al ("Slavenburg", USP

6141675). Deosaran in Patent No. 6580431 differs from the claims 17, 18, 19, 20, 21,

22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 in the application in that Deosaran in

Patent No. 6580431 does not teach accelerating processing speed of an application.

However, such feature is known in the art as taught by Slavenburg. Slavenburg teaches

a method for custom operations to enhance a system for PC applications (col 2, lines

38-44), Slavenburg further teaches increasing processing speed of applications to

enhance PC system (col 2, lines 38-50). It would have been obvious to one of ordinary skill in the art, having the teaching of Patent No. 6580431 and Slavenburg before him at the time the invention was made, to modify the performance regulator system taught by Patent No. 6580431 to include increasing processing speed of application taught by Slavenburg with the motivation being to enhance the system (Slavenburg, col 2, lines 38-44).

5.   Claims 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33 are respectively provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 15, 13, 16, 14, 17, respectively, of pending Application No. 10/462839 in view of in view of Slavenburg et al ("Slavenburg", USP 6141675). The claims in the Application No. 10/462839 differ from the claims in the application in that the claims in Application No. 10/462839 do not teach specifying accelerating processing speed of an application. However, such feature is known in the art as taught by Slavenburg. Slavenburg teaches a method for custom operations to enhance a system for PC applications (col 2, lines 38-44), Slavenburg further teaches increasing processing speed of applications to enhance PC system (col 2, lines 38-50). It would have been obvious to one of ordinary skill in the art, having the teaching of Application No. 10/462839 and Slavenburg before him at the time the invention was made, to specify "allowing application to more fully utilize ..." as claimed in claims 1, 8, 16 of Application No. 10/462839 by "accelerating the processing speed of the application" taught by Slavenburg with the motivation being

to specify specifically a way (i.e. accelerating the processing speed) to allow application

to more fully utilize the processing capabilities of the processor within the computer.

This is a <u>provisional</u> obviousness-type double patenting rejection.

Claim Rejections - 35 USC § 103

6.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

7.   Claims 17-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over

Paul et al ("Paul", USP 5794011), Chen et al ("Chen", USP 5812780), and Slavenburg

et al ("Slavenburg", USP 6141675).

Regarding claims 17, 24, and 32, Paul teaches steps for providing a user with

increased application performance and functionality within a computer system,

comprising:

 (a) an application database that contains profile information on said application (col 4,

lines 1-3)

 (c) a system database that contains configuration information about the computer

system (Fig. 4); and

(d) an intelligent memory (10a) that comprises:

 (i) control logic that uses said application database and said system database to

determine a set of modifications (col 4, lines 10-13); and

(ii) a memory that stores said application and allows said control logic to implement

said set of modifications while said application is executing on the computer system (col

4, lines 13-16);

Paul does not expressly teach that a graphical user interface (GUI) is

incorporated to identify an application program. However, such feature is well known in

the art as taught by Chen. Chen teaches a system and method for accessing a server

application performance which comprises a user interface 74 for controlling the system.

It would have been obvious to one of ordinary skill in the art, having the teaching of Paul

and Chen before him at the time the invention was made, to modify the performance

regulator system taught by Paul to include the GUI taught by Chen with the motivation

being enable the user to easily and efficiently control the system.

Paul does not teach processing speed of said application is accelerated to more

fully utilize the processing capabilities of the processor within the computer. However,

such feature is known in the art as taught by Slavenburg. Slavenburg teaches a method

for custom operations to enhance a system for PC applications (col 2, lines 38-44),

Slavenburg further teaches increasing processing speed of applications to enhance PC

system (col 2, lines 38-50). It would have been obvious to one of ordinary skill in the art,

having the teaching of Paul, Chen, and Slavenburg before him at the time the invention

was made, to modify the performance regulator system taught by Paul to include

increasing processing speed of application taught by Slavenburg with the motivation

being to enhance the system (Slavenburg, col 2, lines 38-44).

Regarding claims 18, 25, and 33, Paul teaches

(i) modifications to said application executing on the computer system (col 4, lines 13-16);

(ii) modifications to an operating system running the computer system (col 5, lines 4-9).

Regarding claim 19, Chen teaches an application table illustrating the name of the application for the user to select (col 11, lines 38-54, lines 38-55, table A).

Regarding claim 20, Paul teaches that said intelligent memory is implemented by the processor and the memory of the computer system (regulation program stored in the memory executed by the processor).

Regarding claim 21, Paul teaches that said intelligent memory resides on the motherboard of the computer system and separated from the processor (regulation program stored in the memory executed by the processor).

Regarding claim 22, it is inherent that the Paul's system comprises the updating application database and system database.

Regarding claim 23, Chen teaches that the computer system includes a network, and said application is a client-server software application executing in a distributed fashion over said network (Fig. 2).

Regarding claim 26, Chen teaches that application input is a process within the operating system executing on the operating system (Fig. 7).

Regarding claim 27, Chen teaches that application input is a thread of an application executed by the operating system (block 98 in Fig. 7).

Regarding claim 28, Chen teaches that the user is a client-side program of a client-server software application executing in a distributed fashion on the computer system (block 64 in Fig. 7).

Regarding claim 29, Chen teaches that the executing application input is a server-side program within said client-server software application executing in a distributed fashion on the computer system (block 90 in Fig. 7)

Regarding claim 30, Chen teaches that user is a server-side program of a client-server software application executing in a distributed fashion on the computer system (block 120 in Fig. 6).

Regarding claim 31, Chen teaches that the executing application input is a client-side program (block 122 in Fig. 6) within said client-server software application executing in a distributed fashion on the computer system.

8.   Applicant's arguments filed 12/28/01 have been fully considered but they are not persuasive.

Examiner disagrees with Applicants that claims 17-33 are allowable. The rejection of claim 17-33 are presented above.

9.   Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kieu D. Vu.

The examiner can normally be reached on Mon - Thu from 7:00AM to 3:00PM at 571-272-4057.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Cabeca, can be reached at 571-272-4048.

The fax phone numbers for the organization where this application or proceeding is assigned are as follows:
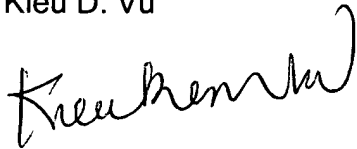
703-872-9306

and / or:

571-273-4057 (use this FAX #, only after approval by Examiner, for "INFORMAL" or "DRAFT" communication. Examiners may request that a formal paper / amendment be faxed directly to them on occasions).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703-305-3900).

Kieu D. Vu